In the

Supreme Court of the United States

OCTOBER TERM, 1973

AUG 28 1974
MICHAEL RODAK, JR., CLERK

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,
Petitioner,

vs.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

vs.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition

NATHAN R. BERKE
One Embarcadero Center
San Francisco, California 94111
Counsel for Respondent California Newspapers, Inc.

SEVERSON, WERSON, BERKE & MELCHIOR
One Embarcadero Center
San Francisco, California 94111
Of Counsel

SORG PRINTING COMPANY OF CALIFORNIA, 948 FIRST STREET, SAN FRANCISCO 94108

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Argument	2
I. The Evidence Demonstrating the Participation of Petitioner Local 10	3
II. The Evidence with Respect to the Participation of Local 70	6
III. Petitioners Had Notice of the Injunctions	6
IV. The Evidence Supports the Finding of Civil Contempt Against Local 10	7
V. The Injunctions May Not Be Collaterally Attacked	10
VI. The Injunctions Enjoined the Activities Engaged in	10
VII. No Jury Trial Was Mandatory	14
Conclusions	16

TABLE OF AUTHORITIES CITED

Cases	Pages
Adickes v. S.H. Kress & Co., 39 U.S. 144, 90 S.Ct. 1598 (1970)	14
Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886 (1970)	15
Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477 (1968)	15
Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 (Sam-Joe, Inc. d/b/a Smiser Freight Services), 174 NLRB 98 (1969)	13
Cheff v. Schnackenberg, 384 U.S. 373, 86 S.Ct. 1523 (1966)	14, 15
City of Campbell Mo. v. Arkansas-Missouri Power Co., 65 F.2d 425 (C.A. 8, 1933)	9
Cliett v. Hammonds, 305 F.2d 565 (C.A. 5, 1962)	8, 10
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 88 S.Ct. 1472 (1968)	15
Frank v. United States, 395 U.S. 147, 89 S.Ct. 1503 (1969)	14, 15
Green v. United States, 356 U.S. 165, 78 S.Ct. 632 (1958)	15, 16
Hoffman v. Local 10, Longshoremen (D.C. No. D. Calif. 1966) 61 LRRM 2339	13
Holland Furnace Co. v. Schnackenberg, 381 U.S. 924, 85 S.Ct. 1559	15

Pages

ILWU, Local 10 (Howard Terminal), 147 NLRB 359 13
ILWU, Local 10, (Johnson Lee, et al), 155 NLRB 1231 13
ILWU, Local 10 (Matson Navigation Co.), 140 NLRB 449 13
In re Jersey City Education Ass'n., 115 N.J. Super. 42, 287 A.2d 206 16
In the Matter of Local 825, Int'l. Union of Operating Engineers, Et al, 57 LRRM 2143 (C.A. 3, 1964) cert den., 379 U.S. 934, 85 S.Ct. 326 16
Int'l Longshoremen's and Warehousemen's Union, Local 10 (Pacific Maritime Assn. & Milton Moore), 121 NLRB 938 (1958) 13

Jersey City Education Association Et al v. New Jersey, 404 U.S. 948, 92 S.Ct. 268 (1971) 16
Johansen v. Longshoremen (California Cartage Co.), 80 LRRM 2521 (DC No. D. Calif. 1972) 13

McComb v. Jacksonville Paper Co., 336 U.S. 187, 69 S.Ct. 497 (1949) 12

NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, 490 F.2d 87 (C.A. 9, 1973) 13
NLRB v. Erkkila (DC No. D. Calif. 1958) 42 LRRM 2594 13
NLRB v. ILWU, Local 10, 214 F.2d 778 (C.A. 9, 1954) 13
NLRB v. ILWU, Local 10, 283 F.2d 558 (C.A. 9, 1960) 13
NLRB v. Int'l Longshoremen's and Warehousemen's Union, Local 10, 210 F.2d 581 (C.A. 9, 1954) 13
N.L.R.B. v. Radcliffe, 211 F.2d 309 (C.A. 9, 1954), cert. den. 348 U.S. 833, 75 S.Ct. 56 6

Oriel v. Russell, 278 U.S. 358, 49 S.Ct. 173 (1929) 8, 9

Pages

Petition of Curtis, 240 F.Supp. 475, affmd. sub nom Ford v. Boeger, 362 F.2d 999 (C.A. 9, 1966), cert. den. 386 U.S. 914, 87 S.Ct. 857, rehearing den. 386 U.S. 978, 87 S.Ct. 1160 10

Schauffler v. Local 1291, Internat'l Longshoremen's Assn., 292 F.2d 182 (C.A. 3, 1961) 8

Schmegmann Bros. Giant Super Markets v. Hoffman-La Roche, Inc., 221 F.2d 326 (C.A. 5, 1955), cert. den. 350 U.S. 839, 76 S.Ct. 77 10

State v. Taylor, 353 U.S. 553, 77 S.Ct. 1037 (1957) 14

Teamsters Local 70 (Granny Goose Foods), 195 NLRB No. 102, 79 LRRM 1448 (1972) 13

Teamsters Local 70 (Sam-Jo. Inc.), 197 NLRB No. 46, 80 LRRM 1354 (1972) 13

Teamsters, Local 70 (Sea-Land of Calif.), 197 NLRB No. 24, 80 LRRM 1300 (1972) 13

United States v. ILWU, Local 10 (DC No. D. Calif. 1971) 78 LRRM 2841 13

United States v. United Mine Workers of America, 330 U.S. 258, 67 S.Ct. 677 (1947) 10

Walker v. City of Birmingham, 388 U.S. 307, 87 S.Ct. 1824 (1967) 6, 10

STATUTES

F.R. Crim. P. 42(b) 8

Labor Management Relations Act, 1947, as amended:

Section 8(b)(4)(B) 3, 11

Section 10(1) 3

National Labor Relations Act:

§§ 10(j) and 10(1) 17

Page

CONSTITUTION

United States Constitution:

Article III, § 2 16

Sixth Amendment 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10,

Petitioner,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondent, California Newspapers, Inc., d/b/a San Rafael Independent Journal, in Opposition

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 492 F.2d 929. Contrary to the statements in the petitions, the District Court did render an opinion in the form of detailed findings of fact and conclusions of law. The District Court on December 24, 1970, entered an order and adjudication, adjudging Petitioners, among others, in civil contempt and an order and adjudication on the same date adjudging Petitioners in No. 73-1924, among others, in criminal contempt as well (R. 1194-1205).

On January 21, 1971, the District Court entered its findings of fact and conclusions of law in the criminal contempt proceeding as supplementary to and *in extenso* of its December 24, 1970, order and adjudication in that proceeding (R. 1249-1262).

On January 28, 1971, the District Court having reopened the civil contempt proceeding to allow Petitioner in No. 73-1813 to introduce additional evidence on its behalf, reaffirmed its order and adjudication in civil contempt as to all contemnors and entered its findings of fact and conclusions of law (R. 1308-1321).

JURISDICTION

The jurisdictional requisites are set forth in the petitions.

QUESTIONS PRESENTED

We adopt the questions as set forth in the brief in opposition by Respondent Hoffman.

ARGUMENT

While we join in the argument set forth in the brief in opposition by Respondent Hoffman, we here discuss some of the issues as we see them.

Based upon the record and the law, we submit there is no issue presented which raises either a constitutional question or a conflict between circuits. Neither is an issue of first impression of an important question of federal law involved which requires decision by this Court.

I. The Evidence Demonstrating the Participation of Petitioner Local 10.

This Petitioner asserts that the evidence relating to it was "quite insignificant." On the contrary, the evidence was such as to warrant the finding by the District Court of this Petitioner's active participation in the violations of the injunctions. The evidence showed that the Petitioners in both cases actively participated with other labor organizations which were contemnors, in a plan to shut down and starve out an entire county; to deny the denizens of that county the daily necessaries of life by preventing trucks delivering food, food products and other necessaries from coming into the county; and by picketing trucks making deliveries and places of business within the county, by violence, destruction of property, threats and intimidation.[1] All of such activity was contrary to the injunctions issued pursuant to Section 10(1) of the Labor Management Relations Act, 1947, as amended.[2]

The Petitioners were acting in furtherance of the Labor dispute between the San Francisco Typographical Union Local No. 21 ("Local 21") and the California Newspapers,

---

1. That the plan was to shut down all of Marin County by exerting economic pressure against it, to in turn exert pressure on the Independent Journal is established in "The President Reports," column of the October 1970 edition of the "Typographical Bulletin," the official journal of Local 21 (Tr. 2303-2304; Pet. Exh. 220).

2. The injunctions were couched in the statutory language of the secondary boycott provisions of Section 8(b)(4)(B) of the Act [29 U.S.C. § 158(4)(B)].

Inc. d/b/a San Rafael Independent Journal ("Independent Journal") to boycott the county of Marin in which the Independent Journal was published.

The testimony of George Johns, secretary-treasurer of the San Francisco Labor Council revealed that for a period of months in 1970, representatives of the unions involved, *including Local 10,* regularly met at the offices of the Council to discuss their support of the strike by Local 21 against the Independent Journal (Tr. 1886-1890, 1899-1900).

Local 10 actively participated in and jointly sponsored with the other contemnors, a mass march and rally in San Rafael on July 25, 1970, in support of the strike against the Independent Journal. It furnished marchers with transportation by chartering a bus. It furnished free lunches to the marchers and offered "guaranteed . . . work opportunities for those taking part." It also periodically made financial contributions to funds to assist the strike and picketing activities. On September 2, 1970, about a month before the activities in violation of the injunction, Local 10 made an authorized contribution in "support of the coming action by the Labor Support Committee in regards to the strike" (Tr. 2023, 2234-2238; Pet. Exhs. 166, 169, 182).

Local 10 urged its members to "spread the word of boycotting the scabby Independent-Journal and all their advertisers" (Tr. 2245-2246; Pet. Exh. 174). In October 1970, in its official publication, "Longshoremen's Bulletin," after referring to the Independent Journal strike and stating "we must stand behind the strikers," Local 10 went on to state:

> "The AFL-CIO, *ILWU,* Teamsters, United Farmworkers and [sic] Unions are making a *joint effort* to set up formal picket lines outside of Companies that advertise in the Independent Journal. *Any longshoreman who is willing to help can report to the Marin Labor Temple* . . . Remember the next union on strike

may be your own. *Note: a bus is being arranged to transfer all men wishing to go starting Friday, October 16. The bus will leave about 7:00 AM from the dispatch hall. How about giving a hand!!* (Emphasis added)

On October 16, 1970, one of the days during which the injunctions were violated, Local 10 chartered a bus to transport pickets to San Rafael (Tr. 2022, 2250; Pet. Exhs. 180, 181). That day the pickets in San Rafael carried signs with legends reading "Longshoremen" and "Seamen." Some of the signs read "This Longshoreman Supports I.J. Strike." These pickets engaged in picketing at both customer and delivery entrances of various stores and in shopping centers (R. 545, 563-564, 588; Pet. Exhs. 58, 64, 73-82, 143-145).

Among these pickets carrying a "Longshoreman" sign, was a picket who wore a button identifying him as a steward of Local 10 (R. 545, Tr. 1126, 1129-1130). Two pickets who were served by a deputy United States Marshal with copies of both injunctions while they were on a picket line at one of the stores which advertised in the Independent Journal, identified themselves as Local 10 members and exhibited their union cards (Tr. 985, 995-997, 1025, R. 716).

On October 16, 1970, during the period involved, in a strike report to the membership of Local 21, Abrams the organizer of that union, praised "the ILWU, whose leadership and participation have been absolutely outstanding" (Tr. 2064).

There was other evidence of the close cooperation in the October 1970 events between Local 10 and the other contemnors. Petitioner Muniz, president of Local 70, according to the records of that union, incurred expenses on behalf of Local 10, among others, in connection with the illegal October 1970 activities (Tr. 2026-2028, 2254-2257; Pet. Exhs. 187A-C, 188).

II. The Evidence with Respect to the Participation of Local 70.

As we read the petition of Muniz and Local 70, they admit having engaged in violations of the Act in October 1970, but in an argument worthy of a semanticist, they urge that what they did on that occasion was not prohibited by the injunctions. In view of their admitted participation, we shall forego reciting the facts as to their role in the plan to shut down Marin County.

III. Petitioners Had Notice of the Injunctions.

The law is well settled that in a civil or criminal contempt proceeding, knowledge of the injunction involved, may be established by circumstantial evidence. *Walker v. City of Birmingham*, 388 U.S. 307, 312, n. 4 (1967). In the absence of "direct evidence of knowledge," the trier of fact "may find knowledge from circumstantial evidence . . . if the circumstances are such as to support a reasonable inference." *N.L.R.B. v. Radcliffe*, 211 F.2d 309, 315 (C.A. 9, 1954), cert. den. 348 U.S. 833, 75 S.Ct. 56.

The District Court found that knowledge of the injunctions by Local 70 and Muniz, its president, could be inferred "beyond a reasonable doubt" from the close collaboration between Muniz and the president of Teamsters Local 85, which collaboration was constantly evidenced throughout the entire secondary boycott plan and campaign.[3] As the District Judge stated when sentencing the contemnors, "it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other

3. One of the injunctions ran against Teamsters Local 85. Neither that Local, its president Richardson, nor San Francisco Typographical Union Local No. 21 and its involved officers all of whom were also found in contempt, have petitioned this Court for a writ of certiorari.

labor unions, didn't know about this order affecting one of its kindred teamster unions" (Tr. 2728).[4]

There was additional evidence which lends credible support to the District Court's finding of knowledge. There was Local 21's widespread and repeated publicity given to the injunctions. There was close cooperation between Local 21 and other unions, including the Petitioners, as we have pointed out, *supra*.

IV. The Evidence Supports the Finding of Civil Contempt Against Local 10.

Local 10 argues that the District Court did not apply the proper quantum of evidence standard in finding it in civil contempt.

The instant case was begun and tried on the basis of the evidence in the criminal contempt case. The District Judge found all of the unions except Local 10, were beyond a reasonable doubt guilty of criminal contempt. Using the same evidence and such additional evidence as the defense adduced, he found all of the unions in civil contempt. Thus, whether "a preponderance of the evidence," as some courts have held or "clear and convincing" evidence as some other courts have held, is the standard, here the evidence which measured up to beyond a reasonable doubt to find all but Local 10 in criminal contempt, was the basis for finding Local 10 in civil contempt. Surely, such evidence is more

---

4. In their petition (p. 17), Muniz and Local 70, state: "Local 21's dispute with the Independent-Journal cut a broad path. Locals 85, 287 *and possibly 10* were the subject of the first injunctive decree." [emphasis supplied] At least to Muniz and Local 70, there was notice and knowledge of one of the injunctions on the part of Local 10.

than "clear and convincing," if that is the standard as urged by Local 10.[5]

As was said in *Cliett v. Hammonds,* 305 F.2d 565 (C.A. 5, 1962), where the Court reversed the criminal contempt proceeding because of non-compliance with F. R. Crim. P. 42(b), the evidence in that aspect of the case being used for a finding of civil contempt (at 571): "As a finding of civil contempt, the judgment . . . is fully supported."

In *Oriel v. Russell,* 278 U.S. 358, 49 S.Ct. 173 (1929) cited by Local 10, the Court treated of the proof required in "civil fraud" in a bankruptcy proceeding in which the bankrupts were found in civil contempt for disobeying court orders. The judgment was affirmed. In that part of this Court's opinion from which Local 10 quotes partially and out of context, this Court stated (278 U.S. 364):

> "With reference to the character or degree of proof in establishing a civil fraud, the authorities are quite clear that it need not be beyond reasonable doubt, because it is a civil proceeding . . . The Court ought not to issue an order lightly or merely on a preponderance of the evidence, but only after full deliberation and satisfactory evidence, with the understanding that it is rendering a judgment which is only to be set aside on appeal or some other form of review, or upon a properly supported petition for rehearing in the same court."

In the instant case there is "full deliberation" and more than "satisfactory evidence."

---

5. As was pointed out in *Schauffler v. Local 1291, Internat'l Longshoremen's Assn.,* 292 F.2d 182 (C.A. 3, 1961), a case cited by Local 10, some courts have held that the petitioner in a civil contempt proceeding must prove a violation of the court's order by "more than a mere preponderance of the evidence," some have held it must be "a clear preponderance of the evidence," and others have indicated that "a degree of certainty is required which leaves no fair ground of doubt." Whatever the test, it is more than met in the instant case.

This Court in *Oriel v. Russell, supra,* went on to hold (278 U.S. 366-367):

> "In the two cases before us, the contemnors had ample opportunity in the original hearing to be heard as to the fact of concealment, and in the motion for the contempt to show their inability to comply with the turnover order. They did not succeed in meeting the burden which was necessarily theirs in each case, and we think, therefore, that the orders of the Circuit Court of Appeals in affirming the judgments of the District Court were the proper ones."

There remains a comment on one other case cited by Local 10. *City of Campbell Mo. v. Arkansas-Missouri Power Co.,* 65 F.2d 425 (C.A. 8, 1933) from which Local 10 purports to quote from page 428, we are unable to find any such statement by the Court. Local 10 has apparently taken separate phrases out of context from two separate paragraphs and tacked them together to make it appear as if they read as appears in the quote. The language of the Court at 428 is as follows:

> "When it is doubtful whether a decree of injunction has been violated, a court is not justified in punishing for contempt, either criminal or civil, for the reason that no one can say with any degree of certainty that the authority of the court needs vindication or that the aggrieved party is entitled to remedial punishment.[6]
>
> "'Process of contempt is a severe remedy, and should not be resorted to where there is fair ground of doubt as the wrongfulness of the defendant's conduct'."

To find civil contempt, the Court in that case said (at 427):

> "... in order to be found guilty of even a civil contempt, it must appear that the appellants were doing some-

6. The sentence begins at the bottom of 427.

thing which constituted a violation of the letter or spirit of the injunction."

Here, the evidence is replete with actions by Petitioners which both violated the letter and the spirit of the injunctions.

V. The Injunctions May Not Be Collaterally Attacked.

It is well established by the decisions of this and other courts, that the validity of an injunction order which has been disobeyed is not open in a criminal contempt proceeding to question in the slightest degree. Disobedience constitutes contempt even though such order may be set aside on appeal. *Walker v. City of Birmingham,* 388 U.S. 307, 87 S.Ct. 1824 (1967); *United States v. United Mine Workers of America,* 330 U.S. 258, 67 S.Ct. 677 (1947); *Cliett v. Hammonds,* 305 F.2d 565 (C.A. 5, 1962).

Neither may an injunction in a contempt proceeding be collaterally attacked. *Schmegmann Bros. Giant Super Markets v. Hoffman-La Roche, Inc.,* 221 F.2d 326 (C.A. 5, 1955), cert. den. 350 U.S. 839, 76 S.Ct. 77; *Petition of Curtis,* 240 F.Supp. 475, affmd. *sub nom Ford v. Boeger,* 362 F.2d 999 (C.A. 8, 1966), cert. den. 386 U.S. 914, 87 S.Ct. 857, rehearing den. 386 U.S. 978, 87 S.Ct. 1160.

VI. The Injunctions Enjoined the Activities Engaged in.

Petitioners Muniz and Local 70 argue that the injunctions did not specifically enjoin the activity in which they engaged in, i.e., "inducement of employees of suppliers and delivery drivers."[7] The evidence demonstrated that in addition to such activity, Muniz was present with other pickets

7. Petition in No. 73-1924, pp. 13-15.

at both the customer and loading entrances of a Lucky store in Fairfax in Marin County. The pickets carried signs bearing the legends, "San Rafael Unfair To Teamsters," "Unfair to Teamsters." Muniz told Lucky's transportation supervisor that he (Muniz) had to back Local 21 and that the pickets would be removed if Lucky removed its advertisements from the Independent Journal (R. 536). Among others representing Local 70 in picketing at Lucky's and other stores in Marin County were business agent Nunes, and members William Dawson and John Spratt (Tr. 301, 386-387, 394-395, 468-471, 481-485, 488, 490-491, R. 535; Pet'r. Exhs. 7-9, 12-15, 54, 68-70, 85, 121). At another market, Petrini's, the Temaster pickets besides carrying Teamster signs, also distributed handbills of Local 21 calling for a total boycott of stores advertising in the Independent-Journal (R. 552, 569).

Thus, the activities of Muniz and Local 70 were not just confined to inducement of employees of suppliers and delivery drivers, which activity in itself is a secondary boycott proscribed by Section 8(b)(4)(B) of the National Labor Relations Act and which statutory language was spelled out in the injunctions. Their very presence at the stores with picket signs and their distribution of Local 21's handbills calling for a total boycott of those stores, was threatening, coercive and restraining conduct against the stores and other persons by appealing to consumers not to patronize those stores in violations of the injunctions. It was secondary boycott activity within the language of the injunctions and of the National Labor Relations Act.

Moreover, Muniz and Local 70 were participants in a plan and scheme with the other contemnors to impose a complete boycott on Marin County. Thus, as joint ventures

or co-conspirators with the other contemnors, they were each responsible and liable for the conduct of each other in putting into effect and carrying out that plan and scheme.

Moreover, this Court in dealing with a decree couched in the language of the Fair Labor Standards Act, held that immunity from contempt for violations of the decree could not be claimed because such violations were not specifically enjoined. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 69 S.Ct. 497 (1949).

The decree in that case enjoined any practices which were violations of the Act. It directed the respondents to obey various provisions of the Act, which were spelled out in the language of the Act. Commenting on the same position as advanced here by Local 70, Mr. Justice Douglas, writing for the majority, stated (69 S.Ct. 500):

> "It does not lie in their mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of the law which we condemned in Maggio v. Zeitz, supra, 333 U.S. at page 69. . . . The instant case is an excellent illustration of how it could operate to prevent accountability for persistent contumacy. Civil contempt is avoided by showing that the specific plan adopted by respondents was not enjoined. Hence a new decree is entered enjoining that particular plan. Thereafter the defendants work out a plan that was not specifically enjoined. Immunity is once more obtained because the new plan was not specifically enjoined. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught."

As Mr. Justice Douglas also pointed out (at 500):

> "That result not only proclaims the necessity of decrees that are not so narrow as to invite easy evasion. . . ."[8]

---

8. Petitioners are not novices in the field of secondary boycotts or injunctions. That they do not function in a mileu of naivite with respect to violations of the National Labor Relations Act and of injunctions, is attested to by the many cases in which they have been involved before the National Labor Relations Board and the Courts. *NLRB v. Int'l Longshoremen's and Warehousemen's Union, Local 10,* 210 F.2d 581 (C.A. 9, 1954); *NLRB v. ILWU, Local 10,* 214 F.2d 778 (C.A. 9, 1954); *NLRB v. Erkkila* (DC No. D. Calif. 1958) 42 LRRM 2594; *Int'l. Longshoremen's and Warehousemen's Union, Local 10 (Pacific Maritime Assn. & Milton Moore),* 121 NLRB 938 (1958); *NLRB v. ILWU, Local 10,* 283 F.2d 558 (C.A. 9, 1960); *ILWU, Local 10 (Matson Navigation Co.),* 140 NLRB 449; *ILWU, Local 10 (Howard Terminal),* 147 NLRB 359; *ILWU, Local 10, (Johnson Lee, et al),* 155 NLRB 1231; *Hoffman v. Local 10, Longshoremen* (D.C. No. D. Calif. 1966) 61 LRRM 2339 (sec. boycott and 10(1) injunction); *United States v. ILWU, Local 10* (DC No. D. Calif. 1971) 78 LRRM 2841 (civil contempt); *Johansen v. Longshoremen (California Cartage Co.),* 80 LRRM 2521 (DC No. D. Calif. 1972). The latter case involved violations of the secondary boycott and hot cargo provisions. An injunction under section 10(1) was issued. A week after the injunction was issued, the hot cargo provision was reimplimented under another contention by Local 10, which resulted in a further court proceeding broadening the injunction. That situation demonstrates the wisdom of Mr. Justice Douglas' statement, *supra. Johansen v. Longshoremen (California Cartage Co.),* 80 LRRM 2895.

Hoffman v. Locals 70 and 85, Teamsters (DC No. D. Calif. 1969) 72 LRRM 2353 (sec. boycott and 10(1) injunction); *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 (Sam-Joe, Inc. d/b/a Smiser Freight Services),* 174 NLRB 98 (1969, sec. boycott); *Teamsters Local 70 (Granny Goose Foods),* 195 NLRB No. 102, 79 LRRM 1448 (1972); *Teamsters Local 70 (Sam-Jo, Inc.),* 197 NLRB No. 46, 80 LRRM 1354 (1972); *Teamsters, Local 70 (Sea-Land of Calif.),* 197 NLRB No. 24, 80 LRRM 1300 (1972), in which because of "a proclivity to violate the Act," a broad remedial order was issued, which was enforced, *NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70,* 490 F.2d 87 (C.A. 9, 1973).

VII. No Jury Trial Was Mandatory.

Petitioner Local 70 asserts a right to a jury trial because a fine in excess of $500 was imposed upon it.[9]

This Court in *Cheff v. Schnackenberg,* 384 U.S. 373, 86 S.Ct. 1523 (1966) reiterated that the decisions of this Court settled the rule that the right to a trial by jury "does not extend to every criminal proceeding." It was there held that since *Cheff* received a sentence of six months imprisonment, and since the nature of criminal contempt, an offense *sui generis,* does not, of itself warrant treatment otherwise, that *Cheff's* offense can be treated only as "petty" in the eyes of the statute and this Court's prior decisions. So holding, it was concluded that *Cheff* was properly convicted without a jury (86 S.Ct. 1526).

Interestingly enough, this Court pointed out in *Cheff* that the corporation of which *Cheff* was an officer was fined $100,000 in the same contempt proceeding and that the corporation's petition for a writ of certiorari was denied (86

---

9. While we have undertaken to discuss the jury issue, we believe that Local 70 has no standing to urge that issue. It did not raise it in the Court of Appeals. Muniz cannot raise it because he was neither imprisoned nor fined. He was placed on probation for a year. *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503 (1969). In their brief in the Court below, while Muniz and Local 70 state they "join and adopt all of the argument made by counsel for each of the other Labor Organizations and individuals found to be in contempt with respect to procedural, substantive and given [sic] matters," they state their brief "will dwell only on matters that are of particular concern to Local 70 and James Muniz" (Muniz and Local 70 Br., p. 3). No where in that brief do they discuss the jury issue. In their petition for rehearing in the Court of Appeals, they only assert two grounds, (1) notice of the injunctions and (2) the quantum of proof. Thus, they apparently did not regard the jury issue as of "particular concern" to them (Muniz and Local 70 Pet. for Rehearing, pp. 1-2). Petitioners Muniz and Local 70 are in no position to advance such issue now. *Adickes v. S.H. Kress & Co.,* 39 U.S. 144, 90 S.Ct. 1598 (1970); *State v. Taylor,* 353 U.S. 553, 77 S.Ct. 1037, 1039 (1957).

S.Ct. 1523; *Holland Furnace Co. v. Schnackenberg,* 381 U.S. 924, 85 S.Ct. 1559.

Recognizing in *Cheff* that by limiting its decision to cases where a six months sentence was imposed may leave the lower courts "at sea" in instances involving greater sentences, this Court in the exercise of its supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, ruled further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof.

The fact that review was denied the corporation fined $100,000 in the same contempt proceeding and the fact that the court explicitly ruled trial by jury need not be granted in criminal contempt cases where the sentence is six months or less and must be granted where the sentence is more than six months, makes it clear that the amount of the fine does not determine whether a jury trial shall or shall not be granted. It is obvious from *Cheff* that this Court's concern was with deprivation of liberty and not the monetary penalty.

Subsequent decisions of this Court support our position on this issue. See, *Bloom v. Illinois,* 391 U.S. 194, 88 S.Ct. 1477 (1968); *Dyke v. Taylor Implement Mfg. Co.,* 391 U.S. 216, 88 S.Ct. 1472 (1969); *Frank v. United States,* 395 U.S. 147, 89 S.Ct. 1503 (1969); *Baldwin v. New York,* 399 U.S. 66, 90 S.Ct. 1886 (1970). In an earlier decision, not overruled, this Court held that criminal contempts are not subject to jury trial as a matter of constitutional right. *Green v. United States,* 356 U.S. 165, 78 S.Ct. 632, 643 (1958).

Prior to the *Cheff* case, this Court denied review in a non-jury criminal contempt proceeding in which the contemnor, a union, was fined $15,000 and the union's business

manager was fined $5000. *In the Matter of Local 825, Int'l. Union of Operating Engineers, Et al,* 57 LRRM 2143 (C.A. 3, 1964), [10] cert. den., 379 U.S. 934, 85 S.Ct. 326. See also, *In re Jersey City Education Ass'n.,* 115 N.J. Super. 42, 287 A.2d 206, in which a fine of $10,000 was levied against a union in a non-jury criminal contempt proceeding and which this Court declined to review, *sub nom Jersey City Education Association Et al v. New Jersey,* 404 U.S. 948, 92 S.Ct. 268 (1971).

Cheff must, therefore, be read in the light of *Green v. United States, supra* and the historical background therein discussed. So reading *Cheff,* it must be confined to situations where imprisonment is involved in criminal contempt proceedings and not where a fine is imposed. This is so, unless this Court is prepared to upset "a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders," which "establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right," *Green v. United States,* 356 U.S. 183, 78 S.Ct. 642-643.[11]

CONCLUSIONS

There is no constitutional question involved, nor any important question of federal law requiring decision by this Court.

---

10. Does not appear to be reported in the Federal Reporter.

11. N. 14 of *Green, supra,* lists the major decisions of this Court discussing the relationship between criminal contempts and jury trial, in which it was concluded or assumed that such proceedings are not subject to trial by jury under either Article III, § 2, or the Sixth Amendment.

In light of the facts and the law, it is submitted that the petitions for a writ of certiorari should be denied.[12]

Respectfully submitted,

NATHAN R. BERKE
25th Floor
One Embarcadero Center
San Francisco, California 94111
Counsel for Respondent
California Newspapers,
Inc. d/b/a San Rafael
Independent Journal

August 26, 1974.

---

12. Muniz and Local 70 assert that "'the fundamental issue raised" in their petition "is the extent to which government by injunction in labor disputes is to be countenanced," (Pet. p. 27). This is not an issue for the Court. It is a matter to be addressed, if anywhere, to Congress. That body has specifically provided for injunctions under the National Labor Relations Act [§§ 10(j) and 10(1); 29 U.S.C. 160(j) and (1)]. We are here only concerned with violations of two injunctions issued under Section 10(1).